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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/681,978	10/09/2003	Dan W. Dansie	3351.2.1	7796
28049	7590	03/17/2005	EXAMINER	
PATE PIERCE & BAIRD 215 SOUTH STATE STREET, SUITE 550 PARKSIDE TOWER SALT LAKE CITY, UT 84111			RAMIREZ, RAMON O	
			ART UNIT	PAPER NUMBER
			3632	

DATE MAILED: 03/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/681,978

Applicant(s)

DANSIE, DAN W.

Examiner

RAMON O. RAMIREZ

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 January 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,8,20,29 and 30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,8,20,29 and 30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

*Detailed Action*

This is the second Office Action corresponding to amendment filed Jan 27, 2005.

The application contains 5 claims, numbered 1, 8, 20, 29 and 30.

*Claim Rejections - 35 USC § 112*

Claims 1, 8 and 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In these claims is not clear if Applicant intends to recite the subcombination of an apparatus for engaging a tool, or the combination of the apparatus and the tool. The preamble of the claim refers to the former but the latter is also claimed; i.e., claim 1, last two lines. Applicant is required to amend the claims to clarify this. For the purpose of this action, the claims are considered to be subcombination claims; that is, the tool is not a positive element of the invention.

Claim 1 lacks antecedent for "the tool" (see line 3).

*Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 8 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by

Mahan.

The patent to Mahan discloses an apparatus for holding a flashlight comprising an attachment member (20) adapted to frictionally holding an outer surface of a flashlight, the attachment member being defined by two flaps, and a grip member (22) which integral to the attachment member.

Claims 29 and 30 are rejected under 35 U.S.C. 102(e) as being anticipated by

Kellough (Pat No 6,769,788).

The patent to Kellough discloses an attachment member (40) frictionally engaging an outer surface of a flashlight, a grip surface (one end of member 40), the flashlight being movable until is secured within the attachment member, and the grip surface being positioning in the mouth of an user.

### *Response to Arguments*

The examiner apologizes for the indication of allowable subject matter for claim 7 but after further review it is considered that the patent to Mahan reads on claims 1, 8 and 20. The clause regarding the friction engagement is broad enough to read on any type of

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friction force, which definitely exists on Mahan when member 20 surrounds the flashlight.

As to the method claims, the new cited reference to Kellough reads on them.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RAMON O. RAMIREZ whose telephone number is (703) 308-0748 (after April 7 2005, the phone would be (571) 272-6821). The examiner can normally be reached on MONDAY-FRIDAY, IST FRIDAY OFF.

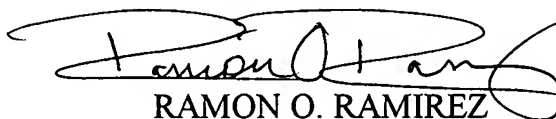
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, LESLIE BRAUN can be reached on (703) 308-2156 (after April 7, 2005, the phone would be (571) 272-6815).

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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A shortened period for response to this Office Action expires **THREE MONTHS**  
from the mailing date of this action.

A handwritten signature in black ink, appearing to read "Ramon O. Ramirez", with a large, stylized flourish at the end.

RAMON O. RAMIREZ

Primary Examiner

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ROR

March 14, 2005